

EXHIBIT 3

COPY

1 ROD M. FLIEGEL, Bar No. 168289
2 ALISON S. HIGHTOWER, Bar No. 112429
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4 LITTLER MENDELSON, P.C.
5 333 Bush Street, 34th Floor
6 San Francisco, CA 94104
7 Telephone: 415.433.1940
8 Facsimile: 415.399.8490

9 Attorneys for Defendant
10 PPG INDUSTRIES, INC.

**ENDORSED
FILED
ALAMEDA COUNTY
MAY 10 2016**

**CLERK OF THE SUPERIOR COURT,
By Lanette Buffin, Deputy**

SUPERIOR COURT OF CALIFORNIA

COUNTY OF ALAMEDA

11 THOMAS MARTINEZ and MICHAEL
12 CABRERA, individually and as
13 representatives of the Class,

14 Plaintiffs,

15 v.

16 PPG INDUSTRIES, INC.,

17 Defendant.

Case No. RG16809889

**DEFENDANT PPG INDUSTRIES, INC.'S
ANSWER TO CLASS ACTION COMPLAINT**

18 Defendant PPG Industries, Inc. ("Defendant"), through its undersigned counsel, answers the
19 Complaint of Plaintiffs Thomas Martinez and Michael Cabrera.

GENERAL DENIAL

20 1. Pursuant to section 431.30(d) of the California Code of Civil Procedure, Defendant
21 hereby answers Plaintiffs' unverified Complaint by generally denying each and every allegation
22 contained therein, by denying that Plaintiffs have been damaged or have sustained any damages as a
23 result of the conduct alleged therein and by asserting the following separate and distinct additional
24 defenses. Defendant further denies that this case is appropriate for class treatment.

ADDITIONAL DEFENSES

25 2. Without admitting any of the allegations of the Complaint and without admitting or
26 acknowledging that Defendant bears any burden of proof as to any of them, Defendant asserts the
27 following additional defenses. Defendant intends to rely upon any additional defenses that become
28

1.

Case No. RG16809889

LITTLER MENDELSON, P.C.
333 Bush Street
34th Floor
San Francisco, CA 94104
415.433.1940

ANSWER TO CLASS ACTION COMPLAINT

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1 available or apparent during pretrial proceedings and discovery in this action and hereby reserves the
 2 right to amend this Answer to assert all such further defenses. Defendant also expressly denies the
 3 existence of any alleged putative class of “similarly situated” individuals that Plaintiffs purport to
 4 represent in this lawsuit pursuant to California Code of Civil Procedure § 382, Federal Rule of Civil
 5 Procedure 23, and California Business & Professions Code §§ 17203-17204. Defendant thus
 6 expressly denies the existence of any such group each and every time it references “Plaintiffs” as if
 7 fully set forth therein. All defenses asserted are also asserted against the putative class, except where
 8 the claim is asserted only on behalf of the named Plaintiff(s).

9 3. Plaintiffs’ Complaint fails to state a claim upon which relief may be granted.

10 4. Plaintiffs’ Complaint, and each and every cause of action contained therein, are
 11 barred in whole or in part because, at all material times, Defendant acted reasonably, in good faith
 12 and without malice based upon all relevant facts and circumstances known by Defendant at the time,
 13 and did not at any time willfully or negligently fail to comply with the applicable law, including but
 14 not limited to the Fair Credit Reporting Act (“FCRA”) and the Investigative Consumer Reporting
 15 Agencies Act (“ICRAA”).

16 5. Plaintiffs’ claims for statutory damages and punitive damages violate the Fourth,
 17 Fifth, Sixth, Eighth, and Fourteenth Amendments to the U.S. Constitution and corresponding
 18 Articles of the California Constitution because: (a) the punitive damages claimed are vastly
 19 disproportionate to the statutory and/or actual damages claimed or available; (b) the award of
 20 punitive and/or statutory damages would constitute an arbitrary and capricious taking of Defendant’s
 21 property which is unjustified by any rational governmental interest; (c) the award of punitive
 22 damages with wholly standardless discretion is inconsistent with due process; and/or (d) the statutes,
 23 including but not limited to Section 616 of the FCRA (15 U.S.C. § 1681n) and the ICRAA are
 24 unconstitutionally vague and unjustifiably arbitrary.

25 6. Plaintiffs’ claims, and those of putative class members, are barred, in whole or in part,
 26 to the extent that Plaintiffs and putative class members did not suffer any cognizable injury nor
 27 suffer any damages and have no standing pursuant to Article III of the United States Constitution
 28 and California law.

7. Plaintiffs' substantive claims and their claims for damages (including but not limited to Plaintiff Martinez's claim under sections 1786, *et seq.* of the California Civil Code), which seek to recover, among other things, punitive damages and/or penalties, violate the Fourth, Fifth, Sixth, Eighth and Fourteenth Amendments to the U.S. Constitution and corresponding Articles of the California Constitution. Defendant specifically alleges that section 1786.16 *et seq.* of the California Civil Code is unconstitutionally vague and ambiguous.

8. Plaintiffs' individual and class-wide claims are excluded from coverage by Section 604 of the FCRA (15 U.S.C. § 1681b) and corresponding provisions of California law to the extent that Defendant obtained any background reports in connection with an investigation of compliance with federal, state or local laws and regulations, the rules of self-regulatory organization or any pre-existing policies (15 U.S.C. § 1681a(y)).

9. Plaintiff Martinez's individual claims are subject to dismissal because the screening reports Defendant received were not "consumer reports" within the meaning of the ICRAA.

10. Plaintiffs' claims are barred, in whole or in part, because notwithstanding Defendant's alleged non-compliance, Plaintiffs otherwise were aware of their purported statutory rights.

11. Defendant alleges that it has complied with the FCRA and the ICRAA in the handling of Plaintiffs' consumer reports and/or investigative consumer reports and is, therefore, entitled to each and every defense stated in and available under the FCRA and the ICRAA and to all limitations of liability.

12. Defendant alleges that Plaintiffs' Complaint, and each and every cause of action contained therein, are barred in whole or in part because Plaintiffs failed to comply fully or at all with procedures available and/or required under the FCRA and the ICRAA to address Plaintiffs' concerns and/or otherwise failed to take reasonable steps to avoid harm.

13. The damages alleged by Plaintiff Martinez under California law are not reasonable and are thus barred by California Civil Code § 3359.

14. Plaintiffs' Complaint, and each and every claim for relief therein, are barred in whole or in part to the extent Plaintiffs seek to recover for alleged harm that is outside of the applicable

1 statute of limitations, including but not limited to, 15 U.S.C. § 1681p of the FCRA and California
2 Civil Code § 1786.52 of the ICRAA.

3 15. Plaintiffs' claims are barred, in whole, or in part, by the equitable theories of estoppel,
4 waiver, and laches.

5 16. All of Plaintiffs' claims on behalf of absent putative class members fail because
6 Plaintiffs cannot meet their burden of demonstrating that each requirement of class certification,
7 including but not limited to ascertainability, adequacy, typicality, commonality, predominance, and
8 superiority, is met here, and because certifying a class in the circumstances of this case would violate
9 Defendant's rights to due process under the law. To the extent that class certification is nonetheless
10 granted at a future date, Defendant alleges and asserts each of the defenses previously stated herein
11 against each and every putative class member.

12 17. Adjudication of this action on a class-wide basis, as applied to the facts and
13 circumstances of this case, would constitute a denial of Defendant's rights to trial by jury and to
14 substantive and procedural due process, in violation of the Fourteenth Amendment of the United
15 States Constitution. *See, e.g., Wal-Mart v. Dukes*, 131 S. Ct. 2541 (2011).

16 18. The Complaint is barred in whole or in part because Plaintiffs did not suffer any
17 cognizable damage or other harm as a proximate result of any alleged act or omission of Defendant
18 or its agents or employees.

19 19. Assuming that Plaintiffs suffered or sustained any loss, damage or injury, which
20 Defendant specifically denies, such loss, damage or injury was proximately caused or contributed to
21 by the negligence or wrongful conduct of other parties, persons or entities, and that their negligence
22 or wrongful conduct was an intervening and superseding cause of the purported loss, damage or
23 injury of which Plaintiffs complain.


24 20. Defendant does not presently know of all facts concerning the conduct of Plaintiffs
25 and the putative class members they seek to represent sufficient to state all affirmative defenses at
26 the time. Defendant expressly reserves the right to amend this Answer should it later discover facts
27 demonstrating the existence of additional affirmative defenses.

28 ///

1 WHEREFORE, DEFENDANT prays for judgment in its favor and against Plaintiffs as
2 follows:

- 3 1. That the Complaint be dismissed with prejudice;
- 4 2. That Plaintiffs take nothing by way of the Complaint;
- 5 3. That Defendant recover its attorney's fees, costs and disbursements in this action; and
- 6 4. For such other and further relief as the Court deems just and proper.

7 Dated: May 10, 2016

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9 
10 ROD M. FLIEGEL
11 ALISON S. HIGHTOWER
12 GILBERT A. CASTRO
13 LITTLER MENDELSON, P.C.
14 Attorneys for Defendant
15 PPG INDUSTRIES, INC.

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POS-040

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| ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO.: 168289 / 112429 NAME: Rod M. Fliegel / Alison S. Hightower FIRM NAME: Littler Mendelson, P.C. STREET ADDRESS: 333 Bush Street, 34th Floor CITY: San Francisco STATE: CA ZIP CODE: 94104 TELEPHONE NO.: 415.433.1940 FAX NO.: 415.399.8490 E-MAIL ADDRESS: rfliegel@littler.com / ahightower@littler.com ATTORNEY FOR (name): Defendant PPG Industries, Inc. | | FOR COURT USE ONLY ENDORSED FILED ALAMEDA COUNTY MAY 10 2016 CLERK OF THE SUPERIOR COURT By Lanette Buffin, Deputy |
| SUPERIOR COURT OF CALIFORNIA, COUNTY OF Alameda STREET ADDRESS: 1225 Fallon Street MAILING ADDRESS: 1225 Fallon Street CITY AND ZIP CODE: Oakland, CA 94612 BRANCH NAME: Rene C. Davidson Courthouse | | |
| Plaintiff/Petitioner: Thomas Martinez and Michael Cabrera Defendant/Respondent: PPG Industries, Inc. | | CASE NUMBER: RG16809889 |
| PROOF OF SERVICE-CIVIL Check method of service (only one): <input type="checkbox"/> By Personal Service <input checked="" type="checkbox"/> By Mail <input type="checkbox"/> By Overnight Delivery <input type="checkbox"/> By Messenger Service <input type="checkbox"/> By Fax | | JUDICIAL OFFICER: DEPARTMENT: |

*Do not use this form to show service of a summons and complaint or for electronic service.
See USE OF THIS FORM on page 3.*

- At the time of service I was over 18 years of age and not a party to this action.
- My residence or business address is:
Littler Mendelson, P.C., 333 Bush Street, 34th Floor, San Francisco, CA 94104
- ☐ The fax number from which I served the documents is (complete if service was by fax):
- On (date): May 10, 2016 I served the following documents (specify):
Defendant PPG Industries, Inc.'s Answer to Class Action Complaint

☐ The documents are listed in the Attachment to Proof of Service-Civil (Documents Served) (form POS-040(D)).

5. I served the documents on the person or persons below, as follows:

- Name of person served:
- ☐ (Complete if service was by personal service, mail, overnight delivery, or messenger service.)
Business or residential address where person was served:

- ☐ (Complete if service was by fax.)
(1) Fax number where person was served:

(2) Time of service:

- ☒ The names, addresses, and other applicable information about persons served is on the Attachment to Proof of Service—Civil (Persons Served) (form POS-040(P)).

6. The documents were served by the following means (specify):

- ☐ **By personal service.** I personally delivered the documents to the persons at the addresses listed in item 5. (1) For a party represented by an attorney, delivery was made (a) to the attorney personally; or (b) by leaving the documents at the attorney's office, in an envelope or package clearly labeled to identify the attorney being served, with a receptionist or an individual in charge of the office; or (c) if there was no person in the office with whom the notice or papers could be left, by leaving them in a conspicuous place in the office between the hours of nine in the morning and five in the evening. (2) For a party, delivery was made to the party or by leaving the documents at the party's residence with some person not younger than 18 years of age between the hours of eight in the morning and six in the evening.

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| CASE NAME: Martinez, et al. v. PPG Industries, Inc. | CASE NUMBER: RG16809889 |
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6. b. ☒ **By United States mail.** I enclosed the documents in a sealed envelope or package addressed to the persons at the addresses in item 5 and (*specify one*):
- (1) ☐ deposited the sealed envelope with the United States Postal Service, with the postage fully prepaid.
- (2) ☒ placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.
- I am a resident or employed in the county where the mailing occurred. The envelope or package was placed in the mail at (*city and state*): San Francisco, California
- c. ☐ **By overnight delivery.** I enclosed the documents in an envelope or package provided by an overnight delivery carrier and addressed to the persons at the addresses in item 5. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier.
- d. ☐ **By messenger service.** I served the documents by placing them in an envelope or package addressed to the persons at the addresses listed in item 5 and providing them to a professional messenger service for service. (*A declaration by the messenger must accompany this Proof of Service or be contained in the Declaration of Messenger below.*)
- e. ☐ **By fax transmission.** Based on an agreement of the parties to accept service by fax transmission, I faxed the documents to the persons at the fax numbers listed in item 5. No error was reported by the fax machine that I used. A copy of the record of the fax transmission, which I printed out, is attached.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: May 10, 2016

Charisse Goodman

(TYPE OR PRINT NAME OF DECLARANT)



(SIGNATURE OF DECLARANT)

(If item 6d above is checked, the declaration below must be completed or a separate declaration from a messenger must be attached.)

DECLARATION OF MESSENGER

- ☐ **By personal service.** I personally delivered the envelope or package received from the declarant above to the persons at the addresses listed in item 5. (1) For a party represented by an attorney, delivery was made (a) to the attorney personally; or (b) by leaving the documents at the attorney's office, in an envelope or package clearly labeled to identify the attorney being served, with a receptionist or an individual in charge of the office; or (c) if there was no person in the office with whom the notice or papers could be left, by leaving them in a conspicuous place in the office between the hours of nine in the morning and five in the evening. (2) For a party, delivery was made to the party or by leaving the documents at the party's residence with some person not younger than 18 years of age between the hours of eight in the morning and six in the evening.

At the time of service, I was over 18 years of age. I am not a party to the above-referenced legal proceeding.

I served the envelope or package, as stated above, on (*date*):

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

(NAME OF DECLARANT)

(SIGNATURE OF DECLARANT)

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| SHORT TITLE: Martinez, et al. v. PPG Industries, Inc. | CASE NUMBER: RG16809889 |
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ATTACHMENT TO PROOF OF SERVICE—CIVIL (PERSONS SERVED)

(This attachment is for use with form POS-040.)

NAMES, ADDRESSES, AND OTHER APPLICABLE INFORMATION ABOUT PERSONS SERVED:

| <u>Name of Person Served</u> <i>(If the person served is an attorney, the party or parties represented should also be stated.)</i> | <u>Where Served</u> <i>(Provide business or residential address where service was made by personal service, mail, overnight delivery, or messenger service. For other means of service, provide fax number or electronic service address, as applicable.)</i> | <u>Time of Service</u> <i>(Complete for service by fax transmission or electronic service.)</i> |
|---|--|--|
| Laura L. Ho, Esq. William C. Jhaveri-Weeks, Esq. Byron R. Goldstein, Esq. Attorneys for Plaintiffs | Goldstein, Borgen, Dardarian & Ho 300 Lakeside Drive, Suite 1000 Oakland, CA 94612 (business) | Time: _____ |
| Anna P. Prakash, Esq. Brock J. Specht, Esq. Attorneys for Plaintiffs | Nichols Kaster, PLLP 4600 IDS Center 80 South Eighth Street Minneapolis, MN 55402 (business) | Time: _____ |
| Bruce C. Fox, Esq. Attorneys for Plaintiffs | Obermayer, Rebmann, Maxwell & Hippel, LLP BNY Mellon Center 500 Grant Street, Suite 5240 Pittsburgh, PA 15219 (business) | Time: _____ |
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